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SECTION C Descriptions and Specifications

CLAUSES INCORPORATED BY FULL TEXT

5252.237-9301 SUBSTITUTIONS OF KEY PERSONNEL (JUNE 1994)

The Contractor shall provide complete resumes for proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 days after receipt of all required information of the consent on substitutes. No change in fixed unit prices may occur as a result of key personnel substitution.

(End of clause)

C.1 DEFINITIONS

The following acronyms or words shall have the corresponding meanings:

NAVFACENGCOM: Naval Facilities Engineering Command Headquarters
 FEA: Federal Executive Agencies
 COR: Contracting Officer's Representative
 SOW: Statement of Work
 D.O.: Delivery Order - A delivery order is a document (DD Form 1155) prepared by the Contracting Officer that is issued to the contractor and unilaterally orders work to be performed.

C.2 INTRODUCTION

a. The Department of the Navy, Naval Facilities Engineering Command (NAVFACENGCOM) purchases utility services in excess of \$900 million annually. From time to time, NAVFACENGCOM through its Navy Rate Intervention office, intervenes in the utility regulatory ratemaking process before various federal, state or local authorities. A major part of Navy Rate Intervention's mission is to provide effective effort in the protection of the Navy's interests in utility cases, to supply technical support for Navy representation before regulatory bodies, and to participate in regulatory proceedings to ensure that the utility rates are reasonably close to the utility's cost of providing the service, that they are not unduly discriminatory, and that the rates are just and reasonable. Frequently, Navy Rate Intervention encounters situations where its participation in the regulatory proceedings concerning utility rate applications is impeded because of manpower, time or specific technical limitations. On occasion, Navy Rate Intervention contracts for professional expertise in certain disciplines in support of its own capabilities. The area in which expert assistance may be required is Revenue Requirements. Because of the substantial changes in the utilities industries, the regulatory environment, and the actions within the Department of Defense (DOD), many new issues such as deregulation, unbundling of cost of capital, asset securitization, rate freeze, post rate freeze rate design, privatization and other similar issues may also have to be dealt with through the Navy Rate Intervention efforts

b. Accordingly, it is our intent to establish, in advance, the services which the contractor will be required to provide. Offerors must explicitly state how they are capable of providing the required analysis, testimony, exhibits

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schedules and work papers or studies within a period not in excess of thirty calendar days from the date of receiving the assignment and pertinent original case data. Offerors should present in detail their technical and managerial plans for accomplishing such tasks in a timely manner.

C.3 SCOPE OF WORK

The following tasks are representative of work the contractor may be required to perform. Each delivery order (D.O.) will include a Statement of Work (SOW) which specifically identifies the requirements of each case.

- a. Review and analyze the utility's application including its filing, testimony, exhibits, and other rate case data, work papers, studies, and submit discovery questions if necessary, as they relate to Revenue Requirements.
- b. Prepare suggested cross-examination questions for all witnesses of adversary parties.
- c. Prepare testimony and attend hearings if the regulatory authority requires oral presentation of the testimony. If such is required, the Contractor's witness shall also provide case counsel with the technical support. The witness will also be subject to cross-examination by any party to the proceedings. Testimony is to be presented on behalf of the Navy, DOD, and all other FEA's for consideration by the regulatory authority.
- d. Provide technical notes for the preparation of legal briefs,
- e. Analyze orders of the regulatory body, and prepare a final report identifying the treatment of the issue presented by the Navy and its resultant cost avoidance.

C.4 GOVERNMENT FURNISHED PROPERTY

None

C.5 CONTRACTOR FURNISHED ITEMS

The contractor shall provide all equipment, materials, and services to perform the requirements of this contract.

C.6 STUDIES AND ANALYSIS REPORTS

- a. Certain utility issues may require a preliminary analysis report to be performed for a determination to be made as to whether there is a need for intervention or other Navy action.
- b. The Contractor may, on his own, identify potential issues that can be challenged in testimony, an estimate of the cost savings if the challenged issues are successfully litigated and a commentary regarding the likelihood of success in the challenge of each issue and bring them to the attention of the Navy Rate Intervention Office without being solicited.
- c. The Contractor shall perform utility-related studies as may be required by the government. The deliverable item shall be a report.

C.7 ANALYSIS, DISCOVERY, TESTIMONY, CROSS-EXAMINATION, HEARINGS, BRIEFS AND ORDER EVALUATIONS

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LARKIN & ASSOCIATES**a. DISCOVERY**

(1) The Contractor shall provide in writing, one copy each, to the COR and the case counsel, simultaneously. All requests for data, documents and information to be served on the utility or other parties shall be provided within the time constraints established in the procedural order and paragraph C.8.

(2) The Contractor shall avoid "canned" data requests as much as possible and shall restrict the requests to those that would assist in the preparation of the Navy's case.

(3) The Contractor shall integrate responses to discovery requests in developing Navy's testimony and brief preparation.

(4) The Contractor shall prepare proper responses to discovery requests served on the Navy. Two copies of the responses shall be provided to the COR unless otherwise directed. The address for the COR is:

Engineering Field Activity Chesapeake
ATTN: Navy Rate Intervention
Washington Navy Yard
851 Sicard Street, SE
Washington, D.C. 20374-5018

B. TESTIMONY. The Contractor shall prepare and deliver testimony, exhibits and schedules, and, if required, surrebuttal testimony on issues within the scope of the contract. A draft of the prepared testimony shall be presented by the Contractor to the COR for review, discussion, and modification where needed. The Contractor may be directed to submit a second draft, if necessary. When the COR is satisfied with the testimony, the Contractor shall be instructed to proceed with the final version. No changes of any nature shall be made to the testimony subsequent to the COR approval without his express authorization. Draft and final testimony shall be submitted in strict adherence to the dates as will be communicated to the Contractor. Final testimony shall be prepared in the format and in the number of copies as required by the particular regulatory authority and will be communicated to the Contractor. Information will be communicated by the Navy Rate Intervention analysts via e-mail or telephonically within the time constraints established in the procedural order and paragraph C.8.

c. CROSS EXAMINATION. The Contractor shall prepare proposed cross-examination questions with anticipated answers based on the testimony, exhibits and schedules filed by witnesses to be examined. The prepared cross-examination questions shall identify the ultimate point to be developed as a result of a successful cross-examination, the detailed reasons for asking them, expected responses, and alternative and follow-up questions. Questions are not to be restricted only to those issues addressed in Navy's case. A copy of the proposed cross-examination questions shall be submitted to the COR and case counsel simultaneously. The Contractor shall be informed of the dates and places of examination of witnesses. The Contractor's attendance at the cross-examination hearings may or may not be required depending on the particulars of each rate case as will be communicated to the Contractor by the Navy Rate Intervention analysts via e-mail or telephonically within the time constraints established in the procedural order and paragraph C.8.

d. HEARINGS. The Contractor's expert witnesses shall appear before the regulatory body to support their testimony. For this phase, the Contractor shall prepare a summary of the testimony to be delivered at the hearings. The summary shall be reduced to writing and forwarded to the COR at least five working days prior to the delivery

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of the testimony on the witness stand. The summary may be waived if such is not the practice of the regulatory authority. The witnesses shall be available to present the testimony and undergo the examination by other parties or to attend Navy's cross-examination of its adversaries at the times and places set by the cognizant regulatory body.

e. **BRIEF PREPARATION.** After the conclusion of the evidentiary hearings, the Contractor shall review the pertinent transcripts and provide technical notes for the Navy brief preparation. Depending on the regulatory body's practices, the briefing material may be in the form of either a simultaneous brief, or opening and reply briefs. In either form, the Contractor shall include the necessary rebuttal to arguments and criticisms of the Navy's positions addressed in opening briefs or expected to be addressed in reply or simultaneous briefs submitted by adversary parties. The brief proposed by the Contractor shall be in the following format, and shall address, but not be limited to, the following, after a brief introduction and background:

- (1) A statement of the objectives of Navy's testimony.
- (2) A complete coverage of every essential point raised with emphasis placed on contested issues.
- (3) An explanation and reconciliation of conflicting evidence to discredit opposing parties, evidence and to highlight the persuasiveness of Navy's proof, and to answer any criticism raised during cross-examination of Navy witnesses.
- (4) The misconceptions and defects in the proof, testimony, or rebuttal offered by other parties' witnesses.
- (5) A showing of why the regulatory authority should grant the particular approach offered by the Navy's testimony.
- (6) The Contractor shall cite the commission's, other commissions', or courts' authority in granting the same or comparable approaches, where applicable.
- (7) The Contractor shall not repeat arguments made in its testimony except in a summarized manner and shall rely exclusively on the record developed during the hearing. Reference to transcript pages shall be made in presenting the discussions dealing with items (3), (4), and (5) above.
- (8) The proposed brief shall be typewritten and provided, one copy each, to case counsel, and the COR on the date to be communicated by Navy Rate Intervention analysts via e-mail and telephonically within the time constraints established in the procedural order and paragraph C.8.
- (9) **BECAUSE EXPERIENCE INDICATES THAT BRIEFS IN MANY INSTANCES MAKE OR BREAK THE CASE, SUBMISSIONS THAT FAIL TO COMPLY WITH ANY OF THE ABOVE MAY BE CONSTRUED AS FAILURE TO PERFORM REQUIRED SERVICES.**

f. **EVALUATION OF ORDERS.** Upon receipt of an interim or final opinion and order of the regulatory body in the case, the Contractor shall analyze it and prepare the order evaluation report. The report shall include a synopsis of the case as it relates to Revenue Requirements. It shall identify the issues the Contractor had presented and contrast them with the regulatory authority's treatment in the order. The Contractor shall also provide the calculated dollar impact of each issue separately on the FEA, DOD, or the Navy, as appropriate. If the impact cannot be calculated, the Contractor shall provide an estimate of the dollar impact, citing the assumptions made. The Contractor may make recommendations for changes in use pattern to be undertaken by the Navy to reduce its

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utilities costs. Two copies of the Order Evaluation report shall be provided to the COR within twenty-five calendar days from the date of the Contractor's receipt of the regulatory authority's order.

C.8 TIME CONSTRAINTS

Constraints are imposed by the regulatory bodies in all rate case proceedings. These limitations vary considerably from one jurisdiction, as well as from one rate case, to another. The Contractor explicitly accepts those constraints acknowledging that they do not constitute, in any way, a valid reason for not performing any of the services required by the terms of this contract or by properly executed D.O. issued under its provisions. The deadline dates shall be conveyed promptly to the Contractor as the particular case develops. The COR shall have the right to modify the regulatory body's imposed deadline dates to allow for review, redrafting, printing or mailing time. The COR shall maximize the time available for the Contractor to perform within these limitations. The Contractor shall, upon reasonable notice, be available for meetings with the COR and case counsel as needed for proper performance of the intervention effort.

C.9 SETTLEMENTS

Occasionally, an applicant utility company or other parties to a rate case propose a partial or complete settlement of issues involved in the proceeding. In such situations, the Contractor whether approached directly by such parties or by the Navy case counsel shall assess the proposal and its impact on the Navy but shall not, either explicitly or implicitly, indicate acceptance or rejection to anyone, including a case counsel, before receiving direct instruction from the Director, Navy Rate Intervention who must personally authorize all settlements.

C.10 SUBSTITUTION OF PERSONNEL

a. The Offeror shall assign to the contract only those persons whose names were submitted with its proposal and who were accepted by the Government. Substitutions shall only be made in accordance with clause 5252.237-9301 SUBSTITUTION OF KEY PERSONNEL (JUNE 1994) and this paragraph.

b. During the contract performance period no personnel substitutions will be permitted unless such substitutions are approved by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer if personnel substitution is needed and shall provide the information required by paragraph c. below. If the substitute is unacceptable, the D.O. may be cancelled.

c. All requests for substitutions must provide a detailed explanation of the circumstances necessitating the proposed substitution, a complete resume for the proposed substitute, and any other information as may be required by the Contracting Officer to approve or disapprove the proposed substitution. The Contracting Officer will promptly notify the Contractor of his determination concerning the proposed name.

C.11 MINIMUM PERSONNEL QUALIFICATIONS

EXPERT WITNESS

--Fifteen (15) years experience which demonstrates knowledge of multi-state public utility commission (state public service commission) regulations and procedures on a national level

--Fifteen (15) years experience which demonstrates expertise in presentation of testimony to the state utility commissions and/or public service commissions

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--Fifteen (15) years experience which demonstrates expertise in presentation of testimony pertaining to electric and/or water cases to the state utility commissions and/or public service commissions

--Must be a Certified Public Accountant with a current license or permit to practice, issued by any U. S. state, territory, or the District of Columbia.